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RICHARD W. WIEKING
CLERK U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND

ADR

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C11-01854

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

DON C. BENNETT, COMERLIS
DELANEY, GARY ROBINSON, DANA
R. RENDAHL, DARREN SCOTT, and
DAVID A. BOECKING, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

SIMPLEXGRINNELL LP,
Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF
PREVAILING WAGE LAW, WAGE AND
HOUR LAWS, AND UNFAIR
COMPETITION LAW
CLASS ACTION
JURY TRIAL DEMANDED**

CASE NO.

COMPLAINT

1 Plaintiffs Don C. Bennett, Comerlis Delaney, Gary Robinson, Dana R. Rendahl, Darren
2 Scott, and David A. Boecking, on behalf of themselves and all others similarly situated,
3 complain against SimplexGrinnell LP as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought on behalf of Plaintiffs and a similarly situated class of laborers,
6 workers, and mechanics who performed work for Defendant SimplexGrinnell LP on public
7 works projects in the State of California. Plaintiffs seek to recover unpaid prevailing wages, and
8 unpaid employee benefits or their value included in per diem wages mandated by California law,
9 which they and members of the proposed class are entitled to receive but did not receive for
10 work they performed on the public works projects.

11 2. The California Prevailing Wage Law, Cal. Lab. Code § 1720 - § 1861, requires that
12 employers with public contracts pay their laborers, workers, and mechanics on public works
13 projects the general prevailing rate of per diem wages, including overtime at least at the rate of
14 one and one-half times the basic rate of pay, as determined by the Director of Industrial
15 Relations. Cal. Lab. Code §§ 1773, 1815; *see id.* § 510. Per diem wages include, among other
16 things, employer payment for health and welfare, pension, vacation, travel, and subsistence. *Id.*
17 § 1773.1.

18 3. The California Prevailing Wage Law applies generally to all work done under contract in
19 excess of \$1,000, paid for in whole or in part out of public funds, involving construction,
20 alteration, demolition, installation, repair or maintenance. *Id.* §§ 1720, 1771.

21 4. Workers who must be paid the prevailing rate of wages for public work include all
22 laborers, workers, or mechanics (“Workers”) employed by contractors or subcontractors in the
23 execution of any contract for public work. *Id.* §§ 1723, 1772, 1774.

24 5. Each contractor and subcontractor performing public work must keep accurate payroll
25 records showing time worked and actual per diem wages paid, and must verify in writing under
26 penalty of perjury that the information in the payroll records is true and correct, and that the
27 employer has paid the prevailing rate of per diem wages, including overtime, to all Workers
28 employed on public works. *Id.* § 1776.

1 6. Defendant has employed more than 500 Workers on public works projects throughout the
2 state of California, and has paid its Workers less than the general prevailing rate of per diem
3 wages, in violation of the California Prevailing Wage Law.

4 **PARTIES**

5 7. Plaintiff Don C. Bennett is a former employee of Defendant and is a resident of Dublin,
6 California. Plaintiff Bennett was employed by Defendant as a fire and security technician and
7 program analyst, and performed work for Defendant on numerous public works projects covered
8 by the California Prevailing Wage Law.

9 8. Plaintiff Comerlis Delaney is a former employee of Defendant and is a resident of
10 Manteca, California. Plaintiff Delaney was employed by Defendant as an installer of high and
11 low voltage fire alarm systems, and performed work for Defendant on numerous public works
12 projects covered by the California Prevailing Wage Law.

13 9. Plaintiff Gary Robinson is a former employee of Defendant and is a resident of Anaheim,
14 California. Plaintiff Robinson was employed by Defendant as a sprinkler fitter doing installation
15 work, and performed work for Defendant on at least one public works project covered by the
16 California Prevailing Wage Law.

17 10. Plaintiff Dana R. Rendahl is a former employee of Defendant and is a resident of Castaic,
18 California. Plaintiff Rendahl was employed by Defendant as a service sprinkler fitter, and
19 performed work for Defendant on numerous public works projects covered by the California
20 Prevailing Wage Law.

21 11. Plaintiff Darren Scott is a former employee of Defendant and is a resident of Rodeo,
22 California. Plaintiff Scott was employed by Defendant as an installer of fire alarm systems and as
23 a construction technician, and performed work for Defendant on numerous public works projects
24 covered by the California Prevailing Wage Law.

25 12. Plaintiff David A. Boecking is a former employee of Defendant and is a resident of
26 Corona, California. Plaintiff Boecking was employed by Defendant as an inspector/pipe fitter,
27 and performed work for Defendant on numerous public works projects covered by the California
28 Prevailing Wage Law.

1 13. Plaintiffs and members of the proposed class are Workers, as defined by Cal. Lab. Code
2 § 1723, who were “employed by a contractor or subcontractor in the execution of any contract
3 for public work,” as defined by Cal. Lab. Code § 1772.

4 14. Defendant is a limited partnership formed in the State of Delaware and a wholly owned
5 subsidiary of Tyco International Ltd. Defendant’s principal place of business is located at 50
6 Technology Drive, Westminster, Massachusetts.

7 **JURISDICTION AND VENUE**

8 15. This Court has original jurisdiction over this action under the Class Action Fairness Act,
9 28 U.S.C. § 1332(d), because this is a class action in which (1) there are more than 100 members
10 in the proposed class, with the final number expected to exceed 500; (2) all of the Plaintiffs, and
11 all or virtually all of the proposed class members, are citizens of California and have a different
12 citizenship from Defendant, a citizen of Delaware whose principal place of business is
13 Massachusetts; and (3) the claims of the individual proposed class members, when aggregated,
14 exceed the sum or value of \$5,000,000.00, exclusive of interest and costs.

15 16. The Northern District of California has personal jurisdiction over Defendant because
16 Defendant maintains offices in this district, does business in California and in this district, and
17 because many of the acts complained of and giving rise to the claims alleged occurred in
18 California and in this district.

19 17. Venue is proper in this district pursuant to 28 U.S.C. § 1391(c) because Plaintiffs
20 Bennett, Delaney, and Scott resided in this district during the events giving rise to the claims,
21 and because a substantial part of the events giving rise to the claims occurred in this district.

22 18. Intradistrict assignment: Pursuant to N.D. Cal. Civ. Local Rule 3-2, intradistrict
23 assignment to the San Francisco or Oakland Division is proper because a substantial part of the
24 events that give rise to the claims asserted here occurred in counties within those divisions.

25 **ADDITIONAL FACTUAL ALLEGATIONS**

26 19. Defendant provides standalone and integrated life safety systems, including but not
27 limited to fire alarm and sprinkler system services, to both public and private customers.
28

1 Defendant designs, engineers, and installs such systems, in addition to providing inspection,
2 testing, maintenance, repair, and monitoring of such systems.

3 20. At all relevant times, Defendant contracted and entered into contracts, either as a prime
4 contractor or as a subcontractor, to perform public work in the State of California covered by the
5 California Prevailing Wage Law.

6 21. In furtherance of the public work conducted by Defendant and covered by the California
7 Prevailing Wage Law, Plaintiffs and other members of the proposed class performed various
8 types of work, including, but not limited to, installing, maintaining, inspecting, testing, repairing
9 and replacing fire alarm, sprinkler system, and other life safety systems.

10 22. Defendant was required to pay, and ensure payment of, the prevailing rate of per diem
11 wages to all Workers performing work on public works projects covered by the California
12 Prevailing Wage Law.

13 23. Defendant failed to pay Plaintiffs and the proposed class members the prevailing rate of
14 per diem wages, including overtime and employee benefits or the value of the employee benefits
15 included in per diem wages, that they are entitled to receive under the California Prevailing
16 Wage Law.

17 24. Plaintiffs have suffered and continue to suffer injury, including monetary injury, as a
18 result of Defendant's acts and omissions alleged here.

19 **CLASS ACTION ALLEGATIONS**

20 25. Pursuant to Federal Rules of Civil Procedure 23(a), (b)(2), and (b)(3), Plaintiffs bring this
21 case as a class action on behalf of all Workers who were, are, or will be employed by Defendant
22 on public works covered by the California Prevailing Wage Law at any time within the four
23 years prior to the date of the filing of the initial complaint in this action through the date of the
24 final disposition of this action, and who were not, are not being, and will not be paid at least the
25 prevailing rate of per diem wages on public works projects covered by the California Prevailing
26 Wage Law.

27 26. The number of individuals in the class is so numerous that joinder of all members is
28 impracticable, and exceeds several hundred. It would be impracticable to bring all—or even a

1 substantial percentage of—such persons before the Court as individual plaintiffs through joinder.

2 27. Common questions of law and fact exist as to members of the class. The overarching
3 question of law and fact that is common to all members of the class is whether Defendant has
4 failed to pay Plaintiffs the amounts required by the California Prevailing Wage Law. There
5 are numerous sub-issues of law and fact that are common to all members of the class, including,
6 but not limited to, the following:

- 7
- 8 (a) Whether Defendant violated the California Prevailing Wage Law, Cal.
9 Lab. Code § 1720 - § 1861, by its acts and omissions alleged here,
10 including but not limited to its failure and refusal to pay the prevailing
11 rate of per diem wages under the California Prevailing Wage Law;
 - 12 (b) Whether Defendant violated the California Unfair Competition Law,
13 Cal. Bus. & Prof. Code § 17200 *et seq.*, by its acts and omissions
14 alleged here;
 - 15 (c) Whether Defendant violated Cal. Lab. Code § 203 by failing to pay, to
16 Plaintiffs who terminated employment with Defendant, all wages due and
17 owing to Plaintiffs at the time of their termination;
 - 18 (d) Whether Defendant violated the California Prevailing Wage Law, Cal.
19 Lab. Code § 1776, by its failure to keep accurate payroll records and by its
20 failure to provide true and correct written verification of such records.

21 28. Plaintiffs' claims are typical of the claims of all class members because (1) they all have
22 been adversely affected by Defendant's failure to pay the full and correct prevailing rate of per
23 diem wages as required by the California Prevailing Wage Law, and (2) their claims are all
24 based on the same legal theory or theories.

25 29. Plaintiffs will fairly and adequately represent the interests of the class because: (1) they
26 are willing and able to represent the proposed class and have every incentive to pursue this action
27 to a successful conclusion; (2) their interests are not antagonistic to those of the other class
28 members; and (3) they are represented by counsel experienced in litigating complex class actions
and state prevailing wage and other wage and hour class actions.

30. Class certification is appropriate under Fed. R. Civ. P. 23(b)(2) because Defendant has

1 acted or refused to act on grounds generally applicable to the class, making appropriate
2 injunctive relief with respect to Plaintiffs and class members as a whole. Plaintiffs and class
3 members are entitled to injunctive relief to end Defendant's common and uniform policy and
4 practice of failing to compensate its employees properly in accordance with the California
5 Prevailing Wage Law for public work performed for the benefit of Defendant.

6 31. Class certification is also appropriate under Fed. R. Civ. P. 23(b)(3). The common
7 questions of law and fact identified above predominate over questions affecting only individual
8 members. A class action is superior to other available methods for the fair and efficient
9 adjudication of this litigation. Requiring each class member to pursue his or her claim
10 individually would entail needless duplication, might result in inconsistent judgments, and would
11 waste the resources of both the parties and the judiciary. Moreover, the financial burden of
12 proving that Defendant violated the law as alleged here also would make the prosecution of
13 individual actions virtually impossible for most, if not all, members of the class.

14 **COUNT I – VIOLATION OF CALIFORNIA PREVAILING WAGE LAW**
15 **Cal. Lab. Code § 1720 - § 1861.**

16 32. Plaintiffs reallege the allegations contained in all preceding paragraphs.

17 33. Defendant contracted to perform public work in the State of California on public works
18 projects covered by the California Prevailing Wage Law.

19 34. Plaintiffs were Workers employed by Defendant to perform work in the execution of
20 such public work.

21 35. Defendant failed and refused to pay Plaintiffs, and fails and refuses to pay Plaintiffs, the
22 prevailing rate of per diem wages, including overtime and employee benefits included in the per
23 diem wages, as required by the California Prevailing Wage Law. Defendant's acts and
24 omissions in this regard are willful and not in good faith, and are without reasonable grounds for
25 believing that the alleged acts and omissions are in compliance with the California Prevailing
26 Wage Law.

27 36. As a result of Defendant's acts and omissions in violation of the California Prevailing
28 Wage Law, Plaintiffs have suffered injury, including monetary injury.

1 37. Plaintiffs are entitled to recover the unpaid balance of the prevailing rate of per diem
2 wages earned, interest, and reasonable attorney's fees and costs of this suit pursuant to Cal. Lab.
3 Code § 1194(a).

4 38. Plaintiffs are further entitled to liquidated damages for unpaid wages pursuant to Cal.
5 Lab. Code § 1194.2(a), except with respect to overtime compensation.

6 **COUNT II – VIOLATION OF CALIFORNIA LABOR CODE**

7 **Cal. Lab. Code § 203**

8 39. Plaintiffs reallege the allegations contained in all preceding paragraphs.

9 40. This count is brought on behalf of Plaintiffs and numerous members of the class who are
10 no longer employed by Defendant.

11 41. Defendant was required to pay all wages due and owing to Plaintiffs upon their
12 termination.

13 42. Defendant failed to pay the prevailing rate of per diem wages earned by Plaintiffs upon
14 their termination.

15 43. Defendant's failure to pay all wages was willful, as Defendant was aware that the full
16 prevailing rate of per diem wages earned were due and owing to Plaintiffs.

17 44. Plaintiffs' unpaid wages continue to be due and owing, as of the present date.

18 45. Plaintiffs are entitled to collect a penalty of an additional thirty days of wages pursuant to
19 Cal. Lab. Code § 203.

20 **COUNT III – VIOLATION OF CALIFORNIA PREVAILING WAGE LAW**

21 **Cal. Lab. Code § 1776**

22 46. Plaintiffs reallege the allegations contained in all preceding paragraphs.

23 47. Defendant has failed to keep accurate payroll records, and has failed to provide true and
24 correct written verification of its payroll records, in violation of Cal. Lab. Code § 1776.

25 48. Injunctive relief is necessary and appropriate to insure that Defendant cease violating §
26 1776 and to insure that Defendant follow the requirements of § 1776 in the future.

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28 ///

1 **COUNT IV – VIOLATION OF CALIFORNIA UNFAIR COMPETITION LAW**

2 **Cal. Bus. & Prof. Code §§ 17200 et seq.**

3 49. Plaintiffs reallege the allegations contained in all preceding paragraphs.

4 50. Defendant's acts and omissions alleged here violate the California Unfair Competition
5 Law, Cal. Bus. & Prof. Code §§ 17200 et seq. Section 17200 prohibits unfair competition by
6 engaging in, among other things, any unlawful or unfair business acts or practices.

7 51. Beginning on a date unknown to Plaintiffs, but at least as long ago as four years before
8 the filing of this action, Defendant committed, and continues to commit, acts of unfair
9 competition, as defined by the Unfair Competition Law, by, among other things, engaging in the
10 acts and omissions alleged here. Also, Defendant has committed such acts and omissions with
11 the intent and objective of gaining an unfair competitive advantage over other businesses that
12 compete with Defendant for public work, particularly because Defendant has obtained public
13 works contracts upon the false representation and certification that it will pay its Workers the
14 required prevailing rate of wages on public works projects covered by the California Prevailing
15 Wage Law.

16 52. Defendant engaged in acts and omissions in violation of the Unfair Competition Law by
17 violating, among others, each of the following laws, the violation of which constitutes
18 independent and separate violations of the Unfair Competition Law:

- 19
- 20 a. California Labor Code § 203;
 - 21 b. California Labor Code §§ 1773, 1774;
 - 22 c. California Labor Code §§ 510, 1815;
 - 23 d. California Labor Code § 1194; and
 - 24 e. California Labor Code § 1776.
- 25

26 53. As a direct and proximate result of Defendant's acts and omissions alleged here,
27 Defendant received and continues to hold, and to unlawfully profit from, ill-gotten gains
28 belonging to Plaintiffs. Plaintiffs have suffered and continue to suffer substantial injury from

1 Defendant's acts and omissions.

2 54. Plaintiffs are entitled to restitution pursuant to the Unfair Competition Law in the
3 amounts unlawfully withheld by Defendant, with interest, as well as an award of attorneys' fees
4 and the costs of this action.

5 55. Injunctive relief is necessary and appropriate to prevent Defendant from continuing and
6 repeating its wrongful and unfair business practices alleged here.

7
8 **PRAYER FOR RELIEF**

9 **WHEREFORE** Plaintiffs respectfully request this Court to:

- 10 a. Certify this case as a class action;
- 11 b. Award Plaintiffs, as damages or restitution, the unpaid balance of the prevailing
12 rate of per diem wages earned under the California Prevailing Wage Law,
13 including overtime and employee benefits or the value of such benefits included
14 in per diem wages, with interest thereon from the date of each missed payment
15 to the date of judgment;
- 16 c. Award penalties pursuant to Cal. Lab. Code § 203;
- 17 d. Award liquidated damages pursuant to Cal. Lab. Code § 1194.2(a);
- 18 e. Grant appropriated injunctive and equitable relief to enjoin Defendant from the
19 unlawful actions alleged here;
- 20 f. Award reasonable attorneys' fees and costs, including expert fees, pursuant to
21 Cal. Lab. Code § 1194(a) and the California Unfair Competition Law; and
- 22 g. Order such other and further relief as the Court deems just and proper.

23 **JURY TRIAL DEMAND**

24 Plaintiffs hereby demand a jury trial on all issues so triable.

25 ///

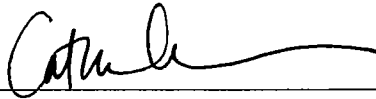
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1 Dated: April 15, 2011

Respectfully submitted,

2
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